



**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

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LEBANON SUPPORT STAFF ASSOCIATION:  
NEA-NEW HAMPSHIRE

Complainant

v.

LEBANON SCHOOL BOARD

Respondent

CASE NO. M-0585:2

DECISION NO. 93-142

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LEBANON EDUCATION ASSOCIATION/NEA:  
-NEW HAMPSHIRE

Complainant

v.

LEBANON SCHOOL BOARD

Respondent

CASE NO. T-0240:17

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APPEARANCES

Representing Lebanon Education Association & Lebanon Support Staff/NEA-New Hampshire:

John Fessenden, UniServ Director

Representing Lebanon School Board:

Robert Leslie, Esq., Counsel

Also appearing:

Maxine Wallace, L.S.S.  
Paula M. Duitille, L.S.S.  
David M. Wallace, L.E.A.  
Raymond Hood, Lebanon School Board  
Randi Laisi  
Robert G. Coffill, Jr.  
Doug Czath

### BACKGROUND

The Lebanon Education Association, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the Lebanon School Board (Board) on April 12, 1993 alleging violations of RSA 273-A:5 I (e) and (h) relative to a refusal to bargain and to a failure to follow the requirements of RSA 273-A as they apply to the fact finding process. This was followed by ULP charges filed by the Lebanon Support Staff Association, NEA-New Hampshire (Support Staff) on April 22, 1993 alleging the same violations to have been committed by the Board relative to their bargaining unit. The Board, through counsel, filed answers to both sets of charges on April 26, 1993. These matters were consolidated for hearing which occurred before the PELRB on October 12, 1993 after intervening continuances sought by the parties were granted pertaining to earlier hearing dates on June 20, 1993 and August 19, 1993.

### FINDINGS OF FACT

1. The Lebanon School Board is a "public employer" of teachers and support staff within the meaning of RSA 273-A:1 X.
2. The Lebanon Education Association is the duly certified bargaining agent for teachers employed by the Board.
3. The Lebanon Support Staff Association is the duly certified bargaining agent for support staff personnel employed by the Board.
4. At times prior to February 23, 1993 the parties attempted to negotiate collective bargaining agreements (CBA's) for both bargaining units for the 1993-94 school year. When these efforts failed the parties made arrangements with Bruce Fraser to conduct mediation sessions on February 23, 1993. Those sessions occurred on that date, with the morning session being devoted to the support staff and the afternoon session being devoted to the teachers bargaining unit.
5. At the close of the morning session with the support staff, three issues remained unresolved, namely, fair share, health insurance and wages. Fraser was asked by the parties to write a fact finder's report on those three issues because he had indicated that he could do so before the district meeting on March 6, 1993. He issued

a report dated February 28, 1993 which was accepted by the support staff and rejected by the Board.

6. At the close of the afternoon session with the teachers, six issues remained unresolved, namely, short-term disability insurance, early retirement, maintenance of standards, teachers salaries, tutor salaries and extra curricular stipends. Fraser was asked by the parties to write a fact finder's report on those six issues because he had indicated he could do so before the district meeting on March 6, 1993. He issued a report dated February 28, 1993 which was accepted by the Association and rejected by the Board.
7. It came as no surprise to the parties' that Fraser was asked to write the two foregoing fact finding reports since it was part of their original strategies that he do so for those items not agreed to during mediation because he was already familiar with the issues and could issue the report prior to the district's annual meeting.
8. During the joint meeting for the support staff mediation session with Fraser on February 23, 1993, the support staff provided him and a representative of the Board with a nine page fact finding brief (Support Staff Ex. B). At no time during or after these proceedings was the support staff provided with a counter-part document or package of documents given to the fact finder by the Board. Raymond Hood, the Board's Chief Negotiator, testified that he provided the fact finder with a package of documents in anticipation of fact finding during that portion of the mediation session when they were meeting separately. The contents of those documents were put in final form earlier on February 23, 1993. There is no evidence that these materials were provided to the support staff or its representatives until the date of hearing in this case, October 12, 1993.
9. During the joint meeting for the teachers' mediation session with Fraser on February 23, 1993, the Association provided him and a representative of the Board with an 18 page fact finding brief (Association Ex. B). At no time during or after these proceedings was the Association presented with a counterpart document or package of documents given to the fact finder by

the Board. Witnesses for the Board testified that they provided the fact finder with (and observed him reading) a package of documents in anticipation of fact finding during that portion of the mediation session when they were meeting separately. These documents were put together in final form on the morning of February 23, 1993. There is no evidence that these materials were provided to the Association or its representatives until the date of hearing in this case, October 12, 1993.

10. At the district meeting on March 6, 1993, Hood urged the voters to reject both fact finding reports.

#### DECISION AND ORDER

The facts of this case do not rise to the level of finding that an unfair labor practice has been committed. While both employee groups gave their presentations to the mediator/fact finder and to the Board in joint sessions and while the Board gave its materials to the mediator/fact finder in separate sessions without providing a copy to the employee organizations, these actions do not, independently, constitute a ULP or bad faith involvement in the fact finding process under RSA 273-A:5 I or RSA 273-A:12, respectively.

Normally, the parties observe the common courtesy of providing each other with a copy of the materials they are providing a neutral party, be it a mediator or fact finder. This enables both parties, as well as the neutral, to identify the issues as perceived by the parties, to see the reasons why those issues are deemed important (i.e., the source and weight of supporting exhibits) and to insure that the names given to areas of dispute reflect what actually is in issue. By giving its materials to the mediator/fact finder in private session and not providing them to the employee organizations, the Board restricted its probabilities for success in the mediation phase of negotiations since the employee organizations were not cognizant of positions taken except after identification by the mediator. Economic use of time and effort was not maximized.

Likewise, the manner in which materials were provided to the neutral was blurred by the hybrid procedure using the same neutral and the same proceedings for both fact finding and mediation. While there is nothing which prohibits such a technique, the record in this case lacks certainty as to when the neutral changed hats from mediator to fact finder. This, in turn, impacts the formality with which arguments and materials must be presented. Fortunately, these proceedings were not compromised and the positions of the employee organizations were not prejudiced by the

ex parte distribution of information because no subsequent briefs or rebuttals were filed by management after it had the advantage of the employee organizations' materials but without the organizations having the benefit of the Board's written arguments.

For the foregoing reasons, the charges of unfair labor practice are hereby DISMISSED.

So ordered.

Signed this 4th day of NOVEMBER, 1993.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.  
Members Seymour Osman and E. Vincent Hall present and voting.